

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

PERSONAL INFORMATION

1. Full Name: James B. Morse Jr.
2. Have you ever used or been known by any other name? Yes If so, state name: James B. Morse II
3. Office Address: U.S. Attorney's Office
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004
4. How long have you lived in Arizona?
I have lived in Arizona from 1969 to 1992 and from 1999 to the present.
What is your home zip code?
85284
5. Identify the county you reside in and the years of your residency. I have resided in Maricopa County from 1987 to 1992 and from 1999 to the present. I previously lived in Apache County from 1981 to 1987 and in Pima County from 1969 to 1981.
6. If nominated, will you be 30 years old before taking office? X yes ___no

If nominated, will you be younger than age 65 at the time the nomination is sent

Filing Date: June 30, 2017
Applicant Name: James B. Morse Jr.

to the Governor? Xyes ___no

7. List your present and any former political party registrations and approximate dates of each:

Republican – 1991 to present
Democrat – 1987-1991

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: Male

Race/Ethnicity: White

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Arizona State University, Tempe, AZ, 1987-1991, BA
University of Virginia, Charlottesville, VA, 1992-1995, JD

10. List major and minor fields of study and extracurricular activities.

Arizona State University

Major: Political Science

Extracurricular Activities:

Associated Students of ASU, Administrative Asst. to President
Insuring Tomorrow Student Leadership Conference, Director
ASU Leadership Foundation, Member
Delta Kappa Epsilon, President, Outstanding Undergraduate

University of Virginia

Extracurricular Activities:

First Year Counsel
Student Bar Association
Post-Conviction Assistance Project
William Minor Lile Moot Court Competition
Co-head Writer for Annual Student Comedy Show

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Arizona State University

- Magna Cum Laude
- Worked part- and full-time jobs throughout college

University of Virginia

- 3.33 GPA (UVa does not provide class rankings, but at that time a 3.25 GPA placed a student in the top 25% of the class)
- 3-year academic scholarship recipient
- Research Assistant to Prof. Michael Klarman

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Supreme Court of Texas – admitted Nov. 3, 1995 (currently inactive)

Supreme Court of Arizona – admitted Oct. 24, 1999

United States District Court – admitted Oct. 21, 2008

Ninth Circuit Court of Appeals – admitted May 2, 2012

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
U.S. Attorney's Office – District of Arizona	Dec. 2007 – present	Phoenix
<ul style="list-style-type: none"> • Section Chief – SW Border Crimes 	Dec. 2012 – present	
<ul style="list-style-type: none"> • Govt. Ethics Advisor 	Jan. 2011 – Aug. 2013	
<ul style="list-style-type: none"> • Deputy Section Chief – SW Border Crimes 	Jan. 2011 – Dec. 2012	
<ul style="list-style-type: none"> • AUSA – Organized Crime and Drug Prosecutions Unit 	Dec. 2007 – Jan. 2011	
Maricopa County Attorney's Office	April 2004 – Nov. 2007	Phoenix
<ul style="list-style-type: none"> • Asst. Bureau Chief – Drug Enforcement 	Nov. 2006 – Nov. 2007	
<ul style="list-style-type: none"> • Deputy County Attorney – Special Crimes 	Jan. 2006 – Nov. 2006	
– Trial Group E	Feb. 2005 – Jan. 2006	
– Probation Violation	Nov. 2004 – Feb. 2005	
– Preliminary Hearing	April 2004 – Nov. 2004	
Law Clerk, Hon. James A. Teilborg United States District Court – District of Arizona	Jan. 2003 – March 2004	Phoenix
Policy Director, Salmon for Governor	June 2002 – Nov. 2002	Phoenix
Associate Attorney, Snell & Wilmer, L.L.P.	June 1999 – Dec. 2002	Phoenix
Associate Attorney, Baker & Botts, LLP	Sept. 1995 – May 1999	Dallas, TX

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Currently, I do not have any partners or associates. The following is a partial list of attorneys with whom I work at the U.S. Attorney's Office in Phoenix:

Betsy Strange
Brooke Afshari
Jillian Besancon
Kristen Brook
William Bryan
Lacy Cooper
Karla Delord
Frank Galati
Gayle Helart
Emory Hurley
Melissa Karlen
Monica Klapper
Mark Kokanovich
Peter Lantka
Kathy Lemke
Sean Lokey
Glenn McCormick
Ryan Powell
Peggy Perlmeter
Christina Reid-Moore
Alexander Samuels
Peter Sexton
Bill Solomon
Tracy Van Buskirk
William Voit
Krista Wood

Dominic Lanza
Todd Allison
Matt Binford
Amy Brown
Paul Bullis
Christina Covault
Monica Edelstein
Maria Gutierrez
Rachel Hernandez
Charles Hyder
Christine Keller
Jim Knapp
Peter Kozinets
Brian Larson
Jennifer Levinson
Jonell Lucca
Karen McDonald
Don Pashayan
Dave Pimsner
Gary Restaino
Ann Scheel
Sharon Sexton
Andy Stone
Diana Varela
Mark Wenker

Ray Woo
Fred Battista
Jeff Borup
Brandon Brown
Anthony Church
Brett Day
Carolina Escalante
Ann Harwood
Natalie Huddleston
Lisa Jennis
Vincent Kirby
Joe Koehler
Krissa Lanham
Lon Leavitt
Raynette Logan
Abbie Broughton Marsh
Bridget Minder
Kiyoko Patterson
Kevin Rapp
Dimitra Sampson
Jacqueline Schesnol
Tom Simon
Larry Tinsley
Keith Vercauteren
Cassie Woo

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

Criminal Law (including Criminal Appeals) – 100%

17. List other areas of law in which you have practiced.

Employee benefits (ERISA), employment, and executive compensation.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

None

19. Describe your experience as it relates to negotiating and drafting important legal

documents, statutes and/or rules.

As a prosecutor, I have drafted complex wiretap applications and appellate court briefs. Because so many appeals are decided in the Federal system without the benefit of oral argument, the brief and excerpts of record are vital to providing the court of appeals with the necessary information and analysis to reach a sound decision. In addition to drafting response briefs in my own appellate matters, I have aided in researching, drafting and editing most of the substantive motions, responses, and appellate briefs filed by the 7-12 prosecutors that I supervise. I have also drafted numerous responses to complex post-conviction relief motions. Much like appellate matters, post-conviction relief matters usually require an extensive citation to the record and thorough analysis.

As the most intrusive investigative tool for law enforcement, wiretaps are authorized only upon a showing to the court that other methods of investigation could not accomplish the goals of the investigation. Because of this rigorous standard, wiretap affidavits are commonly 75-100 pages long and the preparation process involved extensive consultation with investigators, and careful drafts and revisions in order to comply with the statutory and constitutional safeguards necessary to justify such an intrusive investigative method.

I also negotiated and drafted plea agreements with defense counsel in both complex and routine matters, prepared search warrants and various motions and responses related to criminal prosecution, including trial and sentencing memoranda, motions in limine, suppression motions, sentencing objections, and responses to motions to dismiss and for new trial.

In private practice, I negotiated and drafted pension, stock option, deferred compensation, and welfare benefit plans for employers. These plans complied with various Federal laws and regulations, including the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986, and commonly were submitted to the Internal Revenue Service for approval. I sometimes negotiated and frequently drafted contracts, performance-based compensation and employment agreements for clients. I also prepared detailed correspondence to the Internal Revenue Service in voluntary compliance matters and participated in negotiating settlements for clients with the Internal Revenue Service.

20. Have you practiced in adversary proceedings before administrative boards or commissions? No If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? No If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

- State v. London Justice Holmes, CR2005-127422-001DT. November 2005 to February 2006. Defense counsel: Thomas E. Glow, Office of Legal Advocate, 222 N. Central Ave, Suite 154, Phoenix, AZ 85004. E-mail: glowt@mail.maricopa.gov. Phone: (602) 506-4111.

The defendant, age 19, was charged with felony Aggravated Assault, after he accidentally fired a handgun and struck a 16-year-old friend in the abdomen. The defendant and the victim/friend initially lied to police officers about the shooting, but eventually admitted the relevant facts. The victim and the victim's parents both wanted the defendant to receive probation. At the time, office policies precluded a plea agreement that would allow probation. After extensive consultation with the victim and the victim's family and the investigating officer, I offered a plea agreement that allowed the defendant to argue for probation. The defendant accepted the plea agreement and was sentenced to three years' probation and an initial term in jail. This matter was important in my early practice as a prosecutor because it presented a meaningful opportunity to uphold and enforce the law, weigh and consider the concerns of the victim and the victim's family, and respect the court's role in fashioning an appropriate sentence.

- United States v. Jose Benjamin Hernandez, CR-09-1114-02-PHX-GMS. August 2009 to October 2010. Defense counsel: Mark A. Paige, PMB North Power Road, Suite 102, Mesa, AZ 85215. E-mail: mpaige@paigelawfirm.com Phone: (602) 254-5457.

In August 2009, Defendant was involved in a methamphetamine transaction with an undercover DEA agent and a cooperating informant. Defendant and co-defendants negotiated for the delivery of 25 pounds of methamphetamine, but only possessed 1.25 pounds of methamphetamine. Agents served search warrants and seized the

methamphetamine, five firearms, approximately 1,000 rounds of ammunition, counterfeit money, and a chemical used to dilute methamphetamine. Notably, three co-defendants were armed, but Defendant was not. At the time of arrest, Defendant admitted his culpability and that of his co-defendants. Later, Defendant attempted to recant his statement and deny that his co-conspirators were involved. In light of Defendant's extensive criminal history and inconsistent statements, I declined to tender a plea agreement. After negotiating with defense counsel, I agreed not to file a sentencing enhancement that would have resulted in life in prison and allowed Defendant to plead directly to the indictment without the benefit of a plea agreement allowing the judge to exercise discretion as to an appropriate sentence. Defendant was sentenced to almost 20 years in the Bureau of Prisons. This case was meaningful because the strength of the case and the nature of the conduct clearly allowed for meaningful punishment. While the ultimate resolution was somewhat unusual, it allowed me to exercise my discretion to craft a resolution that resulted in a lengthy prison term and allowed the defendant to avoid mandatory life for possession of a relatively small amount of methamphetamine.

- State v. Peter Perez, CR2006-005405-001DT. May 2005 to July 2006. Defense counsel: Anthony J. Knowles, 1201 S. Alma School Rd., Suite 1275, Mesa, AZ 85210. E-mail: victorlopez@knowleslaw.org Phone: (480) 247-6366

Defendant and an accomplice committed a home-invasion burglary. A 12-year-old victim was in the residence and the defendant brandished a firearm and forced the victim into the bathroom. The burglars had fled when police arrived, but the victim was able to partially identify the car they drove. Through documents found in the car, police prepared a photo-line up and the child victim identified the defendant. There was no other physical evidence. Based on victim input, I defended a defense motion for pretrial release and convinced the court to require a cash bond rather than a secured appearance bond. Initially, defendant rejected the plea offer. Rather than put the victim through the trauma and uncertainty of trial, I listened to hours of jail recordings and developed historical evidence to prove motive and opportunity. Confronted with the additional evidence, the defendant pled guilty and was sentenced to a lengthy prison term and a consecutive term of probation. This case is one of many that provided me an opportunity to identify and address case deficiencies in order to defend and protect victims.

- United States v. Zamora-Ibarra, CR12-01889-01-PHX-SRB. October 2012 to March 2013. Defense counsel: Baltazar Iniguez, 3106 North 16th St., Phoenix, AZ 85016. E-mail: zariniguez@aol.com Phone: (602) 285-5688

This defendant acted as one of the assistants for alien smugglers who transported 16 illegal aliens. The lead alien smuggler fled when police tried to stop the truck he was driving. After a high-speed pursuit, the lead smuggler lost control and crashed into a light pole. The lead smuggler died in the collision and many of the aliens, including the defendant, were injured. The defendant provided assistance to the lead smuggler in order to gain passage into the U.S., but did not have any decision-making authority and his culpability was minor compared to others involved in the offense. I worked with defense counsel to fashion a plea resolution that would help to hold defendant and others

accountable for the crime, provide justice for the victims, and avoid the expense, trauma, and complication of a trial involving multiple undocumented-alien material witnesses.

23. Have you represented clients in litigation in Federal or state trial courts? Yes If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 100s

State Courts of Record: 100s

Municipal/Justice Courts: 100s

The approximate percentage of those cases which have been:

Civil: less than 1%

Criminal: 99%

The approximate number of those cases in which you were:

Sole Counsel: 75%

Chief Counsel: 15%

Associate Counsel: 10%

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 5-10%

You argued a motion described above 5-10%

You made a contested court appearance (other than as set forth in the above response) 90%

You negotiated a settlement: 99%

The court rendered judgment after trial: <1%

A jury rendered a verdict: 1%

The number of cases you have taken to trial:

Limited jurisdiction court	<u>2</u>
Superior court	<u>18</u>
Federal district court	<u>6</u>
Jury	<u>25</u>

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil:	<u>0</u>
Criminal:	<u>12</u>
Other:	<u>0</u>

The approximate number of matters in which you appeared:

As counsel of record on the brief:	<u>10</u>
Personally in oral argument:	<u>5</u>

25. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, identify the court, judge, and the dates of service and describe your role.

- United States District Judge James A. Teilborg, Phoenix, Arizona. Judicial Law Clerk, January 2003 – March 2004. I researched and wrote memoranda and proposed orders for a United States District Judge. I worked with all aspects of the Federal trial court's civil, criminal, and habeas corpus dockets. This clerkship provided invaluable direct experience with Federal criminal and civil law, as well as substantive Arizona state law through cases in Federal court through diversity jurisdiction and habeas corpus proceedings.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the

names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

- United States v. Francisco Montes-Vargas, CR10-0708-PHX-FJM; United States District Court, District of Arizona, Honorable Frederick J. Martone. September 5-13, 2012. Defense Counsel Philip Seplow, 2000 N 7th St., Phoenix, AZ 85006. Phone: 602-254-8817. E-mail: screenwriter2@earthlink.net.

In 2009 and early 2010, agents intercepted calls pursuant to a judicially-authorized wiretap and identified "Pastas" as a person who received and distributed drugs in the Phoenix area for a Mexican-based drug trafficking organization. During most of the investigation, agents had identified "Pastas" as having a different name. Toward the end of the investigation, agents determined that Montes-Vargas was "Pastas's" true name. Agents obtained and executed a search warrant on a house in Phoenix and found three firearms and ammunition, 11 kilograms of methamphetamine, 20 kilograms of cocaine, and \$162,685 in United States currency.

Because of the changed name and a lack of photographs of "Pastas," the primary issue at trial was identification of Montes-Vargas as "Pastas." The defendant made incriminating statements during a post-arrest interview with law enforcement, but I discovered that the *Miranda* warnings provided to the defendant were incomplete. I immediately notified the Court and defense counsel that the statements would not be used during our case in chief. Even without the statement, the jury convicted the defendant.

After an initial Anders' brief was rejected by the Ninth Circuit Court of Appeals, the defendant appealed the conviction and sentence. I prepared the answering brief and argued the appeal before the Ninth Circuit. The Ninth Circuit affirmed the conviction, but determined that an acknowledged error in the presentencing investigation report required resentencing.

- United States v. Jose Pita-Mota, Felix Pita-Mota, Jesus Rivera-Alvarado, Juan Carreno-Gutierrez, CR09-1114-PHX-GMS; United State District Court, District of Arizona, Honorable G. Murray Snow. June 22-30, 2010.

Defense counsel:

Stephen G. Ralls (Jose Pita-Mota), 273 S. Scott Ave., Tucson, AZ 85701.

Phone: (520) 884-1234. E-mail: steve@ralls.tuccoxmail.com.

Loyd C Tate (Carreno-Gutierrez), 1921 S. Alma School Rd., Ste. 303, Mesa, AZ 85210. Phone: 480-345-1400. Email: loydtatelaw@gmail.com.

James Sun Park (Felix Pita-Mota), 101 North 1st Ave., Suite 950, Phoenix, AZ 85003. Phone: 602-462-5700. Email: sun@parklaw.us.

Patrick E McGillicuddy (Rivera-Alvarado), P.O. Box 1096, Phoenix, AZ 85001. Phone: 602-635-8665. Email: pmcgillicuddy@qwest.net.

On August 27, 2009, Jose Pita-Mota sent Carreno-Gutierrez, Felix Pita-Mota, Rivera-Alvarado, and another person to deliver one pound of methamphetamine to a supermarket parking lot near 59th Avenue and Thomas Road, in Phoenix. Felix Pita-

Mota, Carreno-Gutierrez, and Rivera-Alvarado all possessed loaded handguns and were arrested at the scene. Agents served a search warrant and arrested Jose Pita-Mota at his home. The search of the home revealed two firearms, approximately 1,000 rounds of ammunition, counterfeit money, and a chemical substance used to dilute methamphetamine.

All four defendants were convicted of drug and weapons charges at trial (a fifth co-defendant pleaded guilty prior to trial). My co-counsel and I defended all five convictions and sentences on appeal, and I was the primary author and argued three of the appeals before the Ninth Circuit. All convictions and sentences were affirmed on appeal. All five defendants have also filed post-conviction relief petitions in the district court. My co-counsel and I responded to these petitions and I conducted one evidentiary hearing before the district court. All petitions were denied by the district court.

- State v. George Lonnie Jones, CR2006-006197-001DT; Maricopa County Superior Court, Honorable David R. Cole. July 27 – August 1, 2006. Defense Counsel Brad Reinhart, 7540 S. Willow Dr., Tempe, AZ 85283. Phone: (602) 443-5604. Email: bradreinhart@mac.com.

The defendant assaulted a prostitute with a knife, causing a serious life-threatening wound to her neck. Originally, the defendant was charged with attempted murder, but after I was assigned to the case, I discovered that the defendant had been the first to call 911. Because the 911 call would make it difficult to prove his specific intent to kill, I took the case back before a grand jury and obtained a superseding indictment charging felony Aggravated Assault. The victim was serving a sentence for an unrelated drug charge and testified in jail attire. This circumstance forced me and the jury to confront the notion of the impartial administration of justice for all. The defendant claimed self-defense, but was convicted and sentenced to 11.25 years in prison. [Based on a review of court minutes issued after I left the County Attorney's Office, a retroactive change in self-defense law resulted in a 2012 grant of a new trial to the defendant. The defendant then pled guilty and was sentenced to 7.5 years in prison.]

- United States v. Richard Alan King, aka William Wallace Keegan, CR 08-00045-PHX-SRB, United States District Court, District of Arizona, Honorable Susan R. Bolton. June 2-17, 2009. Defense Counsel Joy M. Bertrand, P.O. Box 2734, Scottsdale, AZ 85252. Phone: 602-374-5321. Email: joyous@mailbag.com

Between November 2005 and January 2008, King and co-conspirators acquired cocaine in Arizona and transported it, primarily via the U.S. Postal Service, to New York. King had previously been trafficking marijuana from Arizona and California to New York and elsewhere, and shifted to cocaine in 2005. During the early part of the conspiracy, King traveled to Arizona and personally took possession of the cocaine from sources of supply in Arizona. As the conspiracy progressed, King had co-conspirators mail the cocaine to him at various hotels in Long Island, New York. King was caught by law enforcement through an undercover DEA operation in Hauppauge, New York, where he accepted suitcases containing 38 kilograms of sham cocaine.

During the 10-day jury trial, the evidence showed that King had all 10 fingers surgically altered in the 1990's to obliterate his fingerprints above the first joint. A Drug Enforcement Administration forensic fingerprint analyst was able to match the lower joint fingerprints from the arrest under the name of Richard King in January 2008 with a 1977 arrest, confirming his identity as William Wallace Keegan.

King was sentenced to five concurrent life sentences for drug trafficking and a concurrent 240 months for money laundering related to his drug trafficking activities. In imposing the sentence, Judge Bolton noted that King had engaged in drug trafficking for more than 30 years and that this conspiracy had stretched across the U.S. and involved large amounts of drugs and co-conspirator drug traffickers.

At various points during pre-trial proceedings and the trial, the defendant proceeded with counsel and also pro per. Co-counsel and I responded to numerous pre-trial motions. Following trial, defendant has proceeded pro per and I have responded to two motions for new trial, various other post-trial motions, and also assisted with the response to defendant's appeal. The conviction and sentence were affirmed by the Ninth Circuit Court of Appeals.

- State v. Lanisha Stevenson, CR2006-105799-002DT; Maricopa County Superior Court, Honorable Sally S. Duncan. August 28-31, 2006. Defense Counsel Patricia M. Shaler, retired. Phone: (480) 946-8069.

The defendant was charged with aiding and abetting the sale of narcotic drugs (110 mg of crack cocaine) and resisting arrest. Despite an entrapment defense to the drug charge, the jury convicted her of both counts. Because of her criminal history (two prior felony convictions and on parole), she was facing a mandatory minimum of 15.75 years in prison. However, the defendant's prior convictions were for relatively minor offenses (class 6 and class 5 felonies), and her role in the crime (guiding an undercover officer to drug sellers to facilitate the deal) was minor. Accordingly, I sought permission to dismiss the allegation of some of the prior convictions and parole status. This allowed the Court the discretion to impose a prison sentence between six and 18.5 years. Judge Duncan imposed a sentence of 7.5 years in prison on the drug count and a concurrent sentence on the resisting arrest count.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

None.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

None.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

For nearly seven years at Snell & Wilmer and Baker & Botts, my practice was concentrated in the area of employee benefits, Federal income and excise tax, executive compensation and fiduciary regulation. I developed extensive knowledge of the Employee Retirement Income Security Act, the qualified and non-qualified retirement plan provisions of the Internal Revenue Code, and state law regarding contracts and employment. I worked in qualified plan design, drafting, and administration, as well as handling matters related to government audit and regulatory enforcement activity. I also advised on benefits and compensation issues related to business mergers and acquisitions, and the design and implementation of employment, consulting, severance, bonus, stock-based compensation, nonqualified deferred compensation, and golden parachute agreements and trust documents.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? Yes If so, give details, including dates.

I am a partner, along with my wife and brother, in Morse Real Estate, LLC. We own one rental home in Ahwatukee, Arizona. We purchased the home and formed the LLC in March and April, 2012.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? Yes If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Please see my response to Question 30.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? No
If not, explain your decision.

I am only a member of the LLC, and play a relatively minor role in management of the business enterprise. If, however, my position would, in any way, create a conflict or appearance of a conflict of interest, with my duties as a judge, I would withdraw from participation in the LLC.

- 32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes If not, explain.
- 33. Have you paid all state, federal and local taxes when due? Yes If not, explain.
- 34. Are there currently any judgments or tax liens outstanding against you? No If so, explain.
- 35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain.
- 36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? No If so, identify the nature of the case, your role, the court, and the ultimate disposition.
- 37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain.
- 38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No If so, explain.

CONDUCT AND ETHICS

- 39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No If so, provide details.
- 40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? No

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

None.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

None.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

None.

44. List and describe any sanctions imposed upon you by any court.

None.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No If so, in each case, state in detail the circumstances and the outcome.

Defendant Richard Alan King (see my response to question 26 above) filed a bar charge against me in 2014. The State Bar reviewed the charge, determined that no further investigation was warranted, and closed the file.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? Yes If so, list with the citations and dates.

Qualified Retirement Plans and Texas Escheat Law, February 1999 issue of the Newsletter of the Section of Taxation, State Bar of Texas

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes If so, describe.
- With Snell & Wilmer, I regularly presented the "Washington Update" at the monthly meetings of the Western Pension & Benefits Conference. The presentation included discussion of new benefits legislation and recent Federal court decisions about benefits issues.
 - With the Maricopa County Attorney's Office, I taught the training course

on Search and Seizure for new deputy county attorneys and taught a course for probation officers on Probation Violation Hearings.

- With the U.S. Attorney's Office, I have presented training courses for AUSAs on search and seizure law, professionalism, and government ethics. I have also served as an instructor and facilitator at the National Advocacy Center in South Carolina on Sentencing Guidelines for Immigration Offenses, and for the Department of Justice for Criminal Discovery Training in Los Angeles.

53. List memberships and activities in professional organizations, including offices held and dates.

- Western Pension & Benefits Conference, member approximately 1999-2002

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? Yes

- American Bar Association, Committee on Employee Benefits of the Section of Taxation, approximately 1997-2002. In late 2000, I co-authored comments to the Internal Revenue Service regarding provisions of the Internal Revenue Code on behalf of members of the Committee.

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- Gethsemane Lutheran Church, Constitution Committee Chair, 2014-2015 (led the committee that drafted and presented an updated constitution for my church).

54. Describe the nature and dates of any relevant community or public service you have performed.

- Board of Directors, Arizona Academic Decathlon Association, approx. 2000-02
- Gethsemane Lutheran Church: Board of Elders (2006 – 2013); Mission Directors (2010-11); Nominations Committee (2012 – 2014); Constitution Committee (2014 – 2015)

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

None.

56. List any elected or appointed public offices you have held and/or for which you

have been a candidate, and the dates.

None.

Have you ever been removed or resigned from office before your term expired? No If so, explain.

Have you voted in all general elections held during the last 10 years? Yes If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

I am blessed with three wonderful daughters and their lives and activities have been one of my primary interests. My oldest is entering her senior year at a large public high school. My middle daughter is about to start her sophomore year, and my youngest daughter is about to start the eighth grade. They are all very active in school, athletics, and charitable endeavors. My wife, who is also an attorney, serves as a permanent law clerk for a judge on the Ninth Circuit Court of Appeals. We are fortunate to spend most of our free time with our children and supporting their activities.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

I am a native Arizonan who was born in Tucson, grew up on Mt. Lemmon in Pima County, attended Junior High and High School in St. Johns, Apache County, and attended college at Arizona State University in Maricopa County. I have lived in southern, northern, and central Arizona, in Arizona's small towns and big cities. I am a proud product of Arizona's elementary, secondary, and

university system. On Mt. Lemmon, I attended a one-room schoolhouse and sometimes walked to school in snow that was deeper than I was tall. As a 10-year old, I raised money for the Mt. Lemmon Women's Club and won the title of unofficial "co-Mayor" for 1979-80. After my family moved to St. Johns, I attended a school with more than one room, but was still one of only about 91 in my graduating class. In northeastern Arizona, I lived small town life, but also experienced and witnessed the diversity of Arizona's tribal communities through classmates and high school extracurricular activities. My father's job with the Sheriff's department also gave me the opportunity to attend the Navajo Nation Fair and to travel to the Zuni and Hopi lands near St. Johns.

At Arizona State, I experienced education on a larger scale – my freshman biology class at Arizona State was about the same size as my entire high school in St. Johns. While it took some time to adjust, this change allowed me the opportunity to broaden my horizons. The breadth of my life and educational experience continued while attending law school in Virginia, where I met my wife, and in Dallas, where we began our lives together, before returning to Arizona to raise our daughters. I am proud of the unusual experiences of my childhood on Mt. Lemmon, my teen years in St. Johns, and working my way through college in Tempe. As a parent, I am fortunate that the growth has continued, as my daughters continue to bring new friends, volleyball teammates, families and experiences into my life.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

I have been very fortunate in my legal career. As an attorney in private practice, I worked in a highly technical practice area, and I was trained by extremely qualified attorneys who required me to develop a keen attention to detail. As a law clerk, I served for one of the finest judges in the United States and learned how important it is to follow the law fairly and impartially. As a prosecutor in both the State and the Federal systems, I have seen first-hand how judges play an invaluable role to the system of justice at trial, sentencing, and appeal. I have a deep and abiding appreciation for the importance of the judiciary and the need for the fair and impartial administration of justice. I am confident that my combination of criminal and civil experience will be of value if I am selected to serve on the Court of Appeals and I hope that I can earn the opportunity to take on this important role.

I have earned leadership positions with both the Maricopa County Attorney's Office and the U.S. Attorney's Office. At the MCAO, I was designated the Assistant Bureau Chief in the Drug Enforcement Bureau. At the USAO, I have served as a Deputy Chief and now a Section Chief in the office's Southwest Border Crimes units. I also served for more than two years as the USAO's government ethics advisor and was responsible for providing advice and counsel to AUSAs on matters related to government ethics rules and regulations. As a

Section Chief, I am responsible for supervising prosecutors and interacting with representatives from the Court system, defense bar, and Federal law enforcement agencies. As a supervisor of a number of trial AUSAs, many of whom are new to prosecution, I have had a broad breadth of experience beyond the cases that I directly handled. As a supervisor, I have consistently worked with line AUSAs to identify, analyze, address, and avoid potential appellate issues. In this role, I have helped to edit and draft nearly every appellate pleading that has come out of my unit and participated as a mock judge in the moot courts for any appellate arguments. Because of my passion for legal research, analysis, and writing, I have also developed a reputation as a mentor and resource for legal research within the USAO and have consulted on appellate issues, briefs, and moot courts for other units.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes If not, explain.
62. Attach a brief statement explaining why you are seeking this position.

My late mother was a newspaper reporter who covered school board, board of supervisors, and city council meetings in my hometown. She worked for very little pay, and even started her own newspaper, because she believed that it was important for the public to know. My father is a retired deputy sheriff who served in Pima County in the 60s and early 70s, and Apache County in the 80s and 90s. Both of my parents emphasized that the value of a career cannot be measured solely by the size of a paycheck. Their example helped guide my brother, a detective with the Scottsdale Police Department, to follow in their footsteps. I entered law school with an expectation that I would enter public service eventually but spent nearly seven years in large law firms before I chose to follow that path.

In 2002, after years of valuable experience and training in private practice, I made the decision to leave life as a part of a large law firm and re-start my legal career. I was fortunate to get hired as a law clerk for a Federal judge, and follow that experience with a prosecutor's position at the Maricopa County Attorney's Office. After three-and-a-half years at the MCAO, I was hired by the U.S. Attorney's Office and have continued to grow as a prosecutor, lawyer, and a person. Even though I have been professionally and personally fulfilled throughout my career, I know, more than ever, that the highest calling in law is to serve as a judge. I will relish the opportunity as a judge to serve the public, promote the rule of law, and strive toward the impartial administration of justice.

I have consistently and unwaveringly performed my duties as a law clerk, a county prosecutor, and an AUSA with the goal of securing equal justice under

the law for victims, the government, and the defendants whom I prosecuted. If I am able to serve on the Court of Appeals, I will dispassionately follow the dictates of the law without having to advocate for the interests of a specific client or result. I have always followed the maxim that a prosecutor's job is not to win at all cost, but to see that justice is done. As a civil lawyer and a prosecutor, and as a father, I have seen firsthand how important the rule of law is to all citizens. Both in and away from the courtroom, the fair and just administration and interpretation of the law provides the mechanism by which society and individuals can order their affairs with predictability, be held to account impartially, and plan capably for the future. If I am selected to serve on the Court of Appeals I will work hard to support and defend these ideals. I take pride in my reputation for fairness and honesty, and I hope that I am allowed to serve our State, our legal system, and our community as a judge committed impartially to interpreting and applying the law.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See attached.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Not applicable.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not applicable.

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(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

ATTACHMENT 1

This Court liberally construes Rule 404(b) as a rule of “inclusion” and Rule 404(b) evidence is appropriate on any ground other than to show propensity. *United States v. Jackson*, 84 F.3d 1154, 1159 (9th Cir. 1996). Prior act evidence is probative of something other than propensity when it: (1) tends to prove a material point in issue in the present case; (2) is not too remote in time; (3) is proven with sufficient evidence; and (4) if admitted to prove intent, is similar to the offense charged. *United States v. Beckman*, 298 F.3d 788, 794 (9th Cir. 2002).

(1) Proof of a material point in issue.

The government offered evidence of the Arkansas arrest to prove Defendant’s knowledge of drug trafficking, that he would know that a drug deal was happening, and that his presence at the Granada House, the house on Weldon, and at the Ranch Market was not mere accident. This Court has repeatedly approved of evidence of prior drug activity for just such a purpose: “We have consistently held that evidence of a defendant’s prior possession or sale of narcotics is relevant under Rule 404(b) to issues of intent, knowledge, motive, opportunity, and absence of mistake or accident in prosecutions for possession of, importation of, and intent to distribute narcotics.” *Vo*, 413 F.3d at 1018 (internal quotation marks omitted). In *Vo*, a prior cocaine trafficking conviction was relevant to show knowledge of drug trafficking and distribution and to show that

the defendant's actions in that case “were not an accident or a mistake.” *Id.* at 1019; *see also United States v. Jones*, 982 F.2d 380, 382 (9th Cir. 1993) (knowledge and intent are elements of possession with intent to distribute marijuana; evidence of prior involvement in marijuana smuggling operations is admissible because it tends to prove knowledge and intent); *United States v. Holler*, 411 F.3d 1061 (9th Cir. 2005) (same).

The evidence that Defendant and Alvarado were previously arrested together with eleven pounds of cocaine and a firearm is probative to show that (a) both defendants were knowing participants in the charged offenses, disproving accident, mistake, and mere presence; (b) both defendants knew the common business practices of drug traffickers, including the need for counter-surveillance, and the use of firearms; and (c) defendants had an existing relationship that would explain their joint involvement in the drug transaction even though they arrived at the Ranch Market in separate vehicles. This proof of the existing relationship was especially probative, and this Court has recognized the importance of such evidence as it relates to the conspiracy charges:

[A]ssociation and plan are essential elements of the charge of conspiracy. We have previously found evidence of prior acts relevant as tending to demonstrate the existence of a criminal association and plan. Such evidence may “explain the nature of the relationship” between co-conspirators while placing “their transaction in context for the jury,” thereby “show[ing] the background and development of the conspiracy.”

United States v. Jones, 982 F.2d 380, 382–83 (9th Cir. 1992) (quoting *United States v. McKoy*, 771 F.2d 1207, 1214 (9th Cir. 1985)).

Moreover, the probative value of the Arkansas arrest is only highlighted by Defendant's assertion of a mere presence defense. *See United States v. Sager*, 227 F.3d 1138, 1148 (9th Cir. 2000) (affirming use of Rule 404(b) evidence to rebut a defendant's claim that he was merely present). The government argued and the district court recognized the mere presence factor during the hearing on the motion in limine. (RT 6/18/10 19; SER 9.)

In light of all of the areas in which the evidence was relevant, the district court did not err in finding the Arkansas arrest probative of a material point at issue.

(2) Not too remote in time.

Defendant simply “submits,” without authority, that the age of the Arkansas arrest “is too distant to be probative.” (Op. Br. at 33.) Defendant was arrested in Arkansas less than five years before he committed these offenses. In the context of prior drug trafficking activity, this Court has affirmed the use of prior acts that were much older than Defendant's. *See United States v. Martinez*, 182 F.3d 1107, 1111-12 (9th Cir. 1999) (a 10-year-old conviction for heroin importation was properly admitted at trial for importation of methamphetamine); *United States v. Howell*, 231 F.3d 615, 628 (9th Cir. 2000) (a six-year-old and a one-year-old drug

sale conviction were properly admitted); and *Vo*, 413 F.3d at 1019 (a 12-year-old drug trafficking prior was properly admitted). The district court did not err in finding that the prior acts were sufficiently close in time.

(3) Sufficient evidence.

The government introduced sufficient evidence to prove the Arkansas arrest. Defendant and Alvarado were identified in court by the Arkansas state trooper who arrested them in September 2004. The trooper identified Defendant as the driver of the vehicle and testified about the cocaine and the firearm that he found hidden in the trunk of the vehicle. (RT 6/24/10, Test. of Olen Craig, 9–14; SER 101-106.) Defendant implies that the fact that Defendant was not convicted as a result of the Arkansas arrest makes the evidence insufficient. (Op. Br. at 33–34.) However, a prior conviction is not required before prior acts evidence may be introduced. *See United States v. Hollis*, 490 F.3d 1149, 1152–53 (9th Cir. 2007) (admitting Rule 404(b) evidence of prior uncharged drug trafficking); *United States v. Hinostroza*, 297 F.3d 924, 928 (9th Cir. 2002) (affirming Rule 404(b) evidence of uncharged firearm paperwork violations); *cf. Jones*, 982 F.2d at 382 (admitting testimony of involvement in prior conspiracies without indication that the prior involvement led to convictions or even arrests). The prior act presented in this case was not that Defendant was convicted of a prior offense, but that he previously drove a car with Alvarado and that the car contained cocaine and a firearm. The district court did

not err in finding that such evidence was sufficient to allow the jury to “reasonably conclude that the act occurred and that the defendant was the actor.” *Huddleston v. United States*, 485 U.S. 681, 689 (1988).

(4) Similarity to the offense charged.

The final Rule 404(b) criterion, that the past conduct and the charged conduct must be sufficiently similar, was also satisfied. A defendant’s past conduct need not be identical to the conduct charged, it need only be similar enough to be probative of intent. *See United States v. DeSalvo*, 41 F.3d 505, 509-10 (9th Cir. 1994). Here, the other act evidence is substantially similar to the conduct charged. In 2004, Defendant drove a vehicle with Alvarado, a firearm, and eleven pounds of cocaine. In 2009, Defendant drove Alvarado to one location, and then drove to the scene of a drug deal with a different passenger and two firearms, while Alvarado drove another vehicle containing methamphetamine and a firearm. The district court did not err in finding that these events were sufficiently similar to warrant admission.

Because the Arkansas arrest was proper Rule 404(b) evidence under all four prongs of the analysis, the district court did not abuse its discretion in admitting the evidence.

ATTACHMENT 2

B. Argument

Although the district court admitted evidence of the jury's verdict for Count 8 under an exception to the hearsay rule, the invocation of an exception was unnecessary because the district court was allowed to consider hearsay and the verdict was judicially noticeable. In addition, Defendant did not preserve an objection to the admission of the jury verdict on the ground urged in this appeal and any error did not rise to the level of plain error. Finally, even if the jury verdict as to Count 8 was improperly admitted, any error was harmless because the Arkansas conviction document standing alone proved beyond a reasonable doubt that Defendant had been previously convicted of the felony drug offense.

1. The Jury Verdict Was Properly Admitted

During the hearing to prove the Arkansas conviction, the district court first ruled that hearsay was generally inadmissible to prove the prior conviction. The district court then admitted and considered the certified Arkansas conviction document, and the jury's verdict as to Count 8, the felon-in-possession count, in finding that Defendant had a prior conviction for a felony drug offense. (RT 11/4/10 10-12, 15; ER 532-34, 537). The district court did not err because (1) hearsay evidence was admissible during the hearing to prove the prior conviction; and (2) the evidence of the jury verdict for Count 8 was judicially noticeable under Fed. R. Evid. 201. Moreover, under the circumstances of this case, the district

court's decision that the jury verdict as to Count 8 was admissible under Federal Rule of Evidence 803(22) was not plain error.

a. Hearsay was admissible.

During the November 4, 2010, hearing on the prior conviction, the government argued that hearsay was admissible because the hearing was part of the sentencing proceedings. (RT 11/4/10 3-9; ER 525-31.) During the discussion, the district court asked counsel for the government if he was “aware of any authority that tells me that the rules of evidence don’t apply in a hearing to deny—in a hearing regarding the existence of a prior conviction.” (RT 11/4/10 9; ER 531.) Counsel for the government responded he “didn’t find any either way.” (*Id.*) Defense counsel argued that unlike other sentencing proceedings, that the heightened standard of proof in a hearing to prove a prior conviction called for the exclusion of hearsay evidence. (RT 11/4/10 7-8, 10; ER 529-30, 532.) The district court agreed with Defendant and found that hearsay was inadmissible absent an exception to the hearsay rule. (RT 11/4/10 10-12; ER 532-34.)

One circuit court of appeals has considered this scenario, however, and has ruled that hearsay is admissible. In *United States v. Pratt*, 553 F.3d 1165 (8th Cir. 2009), the Eighth Circuit Court of Appeals addressed the admission of hearsay evidence to prove a prior conviction during a hearing under 21 U.S.C. § 851(c). The defendant claimed on appeal that the district court should not have relied on

hearsay evidence to find that his prior felony drug conviction had pre-dated the acts of the offense for which he faced sentencing. *Id.* at 1170. The district court in *Pratt* had allowed extensive hearsay testimony about the offense, including testimony that a number of individuals had told the testifying officer that the defendant dealt drugs at various times. *Id.* at 1168. Some of this testimony included double hearsay. *Id.* The Eighth Circuit rejected the defendant's challenge because the hearing to prove the prior conviction was part of the sentencing process, and reliable hearsay evidence is admissible during sentencing. *Id.* at 1170; *cf. also* 18 U.S.C. § 3661 (providing that no limits may be placed on the information a court may consider in imposing sentence); *United States v. Littlesun*, 444 F.3d 1196, 1199 (9th Cir. 2006) (holding that reliable hearsay is admissible during sentencing proceedings).

Here, the hearing to prove that Defendant had a prior conviction for a felony drug offense in Arkansas was part of the sentencing proceedings and reliable hearsay was admissible. The reasoning of the district court is not controlling, *Pang*, 362 F.3d at 1192, because the record establishes that the evidence that the government sought to introduce at the hearing was admissible hearsay. That evidence—the jury verdict and the testimony of Corporal Craig—far exceeds the reliability of the evidence presented in *Pratt*. Moreover, Defendant had an opportunity during trial to cross examine Corporal Craig on identification, the

exact issue that he raised in his denial of the prior conviction. Accordingly, the district court properly considered the evidence of the jury verdict as to Count 8—and should have admitted the trial testimony of Corporal Craig—in finding that the prior conviction was proved beyond a reasonable doubt.

b. Fed. R. Evid. 201.

Regardless of *Pratt*, the district court was still allowed to take judicial notice of the jury verdict for Count 8 pursuant to Fed. R. Evid. 201. During the hearing, the district court asked defense counsel why it could not take “judicial notice of the verdict entered against your client?” (RT 11/4/10 14; ER 536.) Defense counsel’s only response was that the hearing was a separate proceeding. (RT 11/4/10 15; ER 537.)

The district court was right to raise this question to defense counsel. The jury verdict as to Count 8 was an “adjudicative fact” eligible to be judicially noticed. Fed. R. Evid. 201(a), Advisory Committee Note to Subdivision (a) (describing “adjudicative facts” as “simply the facts of the case.”). Moreover, because the district court had presided over the trial and taken the jury verdicts, the fact of the verdict was “not subject to reasonable dispute” and was “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The district court offered Defendant the opportunity, pursuant to Fed. R. Evid. 201(e), to be heard, and

Defendant's response did not contest whether the verdict was judicially noticeable under the rule. (RT 11/4/10 14-15; ER 536-37.) The district court was entitled to take judicial notice of the verdict and was allowed, but not required, to accept that as conclusive. Fed. R. Evid. 201(g). Because the district court was allowed to consider the evidence of the jury verdict as a judicially noticeable fact, this Court should affirm the decision, "regardless of whether the district court relied on" Federal Rule of Evidence 201, as the basis its decision. *Pang*, 362 F.3d at 1192.